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manitoba
advisory council
on the status
of women

Telephone: 944-6281 693 Taylor Avenue Winnipeg, Manitoba R3M 3T9

REPORT ON THE MANITOBA PENSION COMMISSION HEARINGS

March 29, 30, 31, 1983

Submitted to:

Mary Beth Dolin
Minister Responsible for
the Status of Women

Submitted by:

Manitoba Advisory Council
on the Status of Women
May 3, 1983

Report on the Manitoba
Pension Commission Hearings

Council members monitored the two daytime and one of the evening sessions. The Executive Director monitored the second evening session. We were not present for the extra session on Thursday, but were familiar in any case with the position paper of the Manitoba Action Committee on the Status of Women - which was a major presentation.

Before addressing certain specific recommendations, Council would like to make some general remarks:

We congratulate the Pension Commission of Manitoba, and the Minister on the proposed amendments to the Pensions Benefits Act. It is our opinion that the thrust of these proposals is to increase retirement security for contributors and this is particularly crucial to women, whose wages are proportionately lower than those of men, and to part-time workers, predominantly female.

It is our distinct impression from monitoring these hearings that both the Commission and the Government will be under pressure not to proceed towards legislation. It was the contention of many presenters that: "the time is not right"; "that we have to wait for economic stability"; that "Manitoba should wait for consensus/uniformity among the ten provinces and the federal government."

The Advisory Council urges both the Commission and the Government to proceed. It is essential, however, that the Government at the same time strengthen its efforts at the federal level to insist on reform of the public pension system.

It is clear to us, advocating the concerns of women to the Government, that the time is never "right" i.e. perfect for reform, but that Manitoba can and must take an initiatory and creative role in pension reform. It will be easier for other provinces to take constructive action if there are progressive standards to emulate. Of course, it is easier to maintain the status quo, which seemed to be the only philosophical base for so many of the presenters who were critical of reform, but responsible government has a duty and an obligation to consider the social, not merely the profit implications, of pension reform.

We do appreciate that reform involves cost and understand that recommendations will be phased accordingly. Many presenters challenged the assertion that recommendations 1 - 17 would be "low-cost" improvements. The Manitoba Advisory Council on the Status of Women is of the opinion that disinclination to disturb the status quo exaggerates fears of increased cost.

Just as there will never be a "right time" for reform, there will never be a time when reform is without cost. Certainly women cannot continue to pay the price in their retirement - poverty.

The following federal statistics serve to illustrate the present, and future position of women:

In 1980, -66 per cent of elderly women were poor
-66 per cent of all poor families were headed by women
-46 per cent of single women were poor.
(Canadian Council on Social Development)

In 1981, - the number of persons over 65 years of age has increased by 17.9 percent
- the number of divorced persons has increased by 65 percent.
(1981 Census)

Finally, having monitored the hearings, Council met with representatives of women's organizations which had made presentations to the Commission; a representative of the pension industry; and a member of the Pension Commission:

Karen Moser, Manitoba Association of Women and the Law
Bernice Sisler, Y.W.C.A.
Judith Froese, Investors Syndicate
Georgia Cordes, Pension Commission of Manitoba
Valerie Gilroy, Manitoba Action Committee on the Status of Women

We consulted for an afternoon with these women and their opinions have been taken into account in this presentation.

Copies of the presentations to the Pension Commission by the Manitoba Association of Women and the Law, the Y.W.C.A. and the Manitoba Action Committee on the Status of Women are attached for the Minister's reference.

Here follows the Manitoba Advisory Council on the Status of Women's response to those recommendations we consider of particular importance to women.

We bring to the Minister's attention in particular Council's position concerning Recommendation 9, which moves substantially from that of the Commission.

Portability

Recommendation 1

The legislation should be amended to provide that no pension plan prohibits the right of an employee to the portability of his or her pension credits. In addition, portability would be allowed by the following mechanisms:

1. Transfer to a locked-in R.R.S.P.; or
2. Transfer to a locked-in retirement account (LIRA) as proposed by C.A.P.S.A.; or
3. Transfer to a pension plan of a new employer where such a plan allows for acceptance of such a transfer; or
4. Leave the pension credits in the plan of the present employer.

Portability is extremely important to women. Work patterns of women, often imposed, include mobile work history, pregnancy, and family rearing.

Portability should not only allow for transfer to another job's pension plan, but should provide for locking-in to an R.R.S.P. or other similar plans.

Recommendation 1 should be a "mandatory and positive obligation rather than a negative prohibition." (Manitoba Association of Women and the Law).

N.B. - It is essential that a low rate of interest be used to calculate the benefit of a terminating employee; at present deferred pensions are most often paid in the nominal dollars of the day the employee left that employer, which effectively reduces the value to very little in the dollars of retirement day. There are no regulations providing inflation protection.

Participation and Eligibility

Recommendation 2

A new section should be added to the Act to provide for a compulsory membership for all employees who have access to a pension plan at their workplace, based on the employee meeting certain minimum eligibility requirements as prescribed by the legislation. Such requirements should be

the same for both males and females. Eligibility requirements prescribed should be: the attainment of age 25 (subject to Human Rights legislation) and the completion of 2 years of service. Plans would be open to adopt other eligibility rules which would result in earlier plan membership if they so desired.

The Commission recommends that the definitions of employee, continuous service, and the temporary suspension of employment be amended to encompass part-time employees. These definitions should take the following form:

1. "Employee" means an individual who performs a service in Manitoba or designated province under a contract of service such as apprenticeship, and includes an officer or director of a corporation or of an unincorporated organization or an agent acting for this principal on a substantially full-time basis and further includes those individuals who over a period of two years, remain within the employ of the employer whether or not they are considered full-time, part-time, casual, temporary, or temporary contract employees.
2. "Temporary suspension of employment" shall mean a period not to exceed 26 consecutive weeks (6 months).
3. A new definition should also be added to include service such as pregnancy leave, adoptive parent leave, and other authorized leave as continuous service.

Age Requirement

Council disagrees with the minimum age requirement of 25 years for eligibility. Besides probable contravention of Human Rights legislation, it clearly discriminates against female workers.

Labour and Employment Services statistics show that fully one-third of women in the Manitoba labour market in 1980 were under 25 years of age ("Women in the Manitoba Labour Market", p. 27).

As women often "drop out" of the labour force around this age to bear and raise children, the proposed requirement would leave them uncovered by a pension plan until re-entry in their mid-thirties or later. Joining a plan for the first time at this point puts them at an obvious disadvantage in the building of pension credits.

We can find no basis for excluding workers from ages 18 to 24 from participation.

Minimum Years of Service

The requirement of 2 years of service is reasonable providing that certain mechanisms are put in place:

1. Provision for employees to opt to buy back their first two years' worth of benefits.
2. Monitoring employers to prevent possible abuse - i.e. prevention of eligibility through rotating terminations at 2 years less a day, and then rehiring.

Definitions

1. Clarification is needed in the definition of "employee". In the case of part-time workers, the 2 years' service must be calendar years, not staff-years. Otherwise part-timers face a double jeapordy. Their benefits are earnings-related, and so concommitantly less. They must not be faced with longer service requirements as well.

   The Minister is well aware of the high percentage of female part-time workers, and this is of great concern to women.

3. Leave on acquiring a new child into the home must be available to fathers as well as mothers. It could be described as "Parental Leave on the birth or adoption of a child."

Pension Credits and Marital Property Law

Recommendation 9

An amendment should be made to Section 27 of the Act which will recognize pension credits as family assests

within the meaning of The Marital Property Act together with new sections laying out guidelines as to the method for division of these credits. The methodology must consider the following:

The timing of the division, commencement of payment, evaluation of pension credits (using a method devised by the Pension Commission), and transfer of the divided portion by the non-member spouse to a locked in R.R.S.P. in his or her name. It is recommended that this change also apply to common law spouse as defined by Family Law. It is the Commission's view that division of such credit should be used to provide pension income only and not in the form of a cash refund or a trade-off against other family assets.

Council agrees that there should be an actual splitting of pension credits. Consequently, pension credits must be removed entirely from The Marital Property Act.

The scheme for sharing assets in the Act does not contemplate a 50/50 sharing of each asset. Rather, the pension credit owned by a particular spouse is included in an accounting of all assets owned by that spouse for the purpose of determining whether that spouse has a greater net worth thereby making necessary an equalizing payment or transfer. This scheme of accounting for assets and then equalizing values as between spouses (which is not a division) is not appropriate if the objective is to ensure an actual splitting of the asset.

Council disagrees in the timing of the splitting of pension credits. Splitting of pension credits at marriage breakdown is not as satisfactory as splitting at the commencement of marriage. If pension credits were immediately split and channeled into a separate account for each spouse, at least on paper, then the following advantages would ensue:

a) this would overcome the considerable difficulty of valuing the pension at the time of marriage breakdown as the credits would already be in separate accounts;

b) this would recognize the concept that marriage is a partnership and that family income, including pensions which are really deferred income, is the property of both spouses;

c) this is the only effective way of preventing "horse trading" with other marital assets so as to ensure the ultimate objective: that older women have pensions upon which to draw so as to provide a decent standard of living;

d) this would enable both spouses the option of leaving the accummulated benefits in the plan even after marriage breakdown thereby allowing each spouse to take the benefit of any increased benefits provided by the plan.

This concept of immediate sharing, although perhaps seemingly unusual at first, is really no different from the concept of instantaneous community of property already found in some jurisdictions and contained in Manitoba's original Marital Property Act.

With respect to extending sharing of pension credits to common law spouses, it is suggested that the whole area of the rights and responsibilities of common law spouses needs to be rationalized. Presently, The Marital Property Act applies only to married people. With the present divorce laws, and soon to be probably relaxed further, anyone who cohabits without marriage probably chooses to do so. To make pension division applicable to common law spouses would be to impose upon people who choose not to marry, laws which heretofore distinguished the married relationship. Any changes should most appropriately be made in concert with changes to The Marital Property Act.

Survivors Benefits

Recommendation 11

1. The standard form of pension at retirement should be a joint and survivor pension reducing to 2/3 on the pensioner's or spouse's death. This pension would be guaranteed for a minimum of 60 months. It would be required that the spouse sign a waiver if another option is selected.

2. Every plan should allow for a refund of the pensioner's own contributions with interest to the spouse or estate (if the employee was not vested at the time of their death).
3. Concerning deferred pensions, where an individual dies during a deferral period, the spouse may receive a pension payable immediately or in accordance with the terms of the plan. Alternatively, the commuted value of the member's pension could be transferred to a locked-in account to the credit of the spouse.
4. Survivor benefits should continue after remarriage.

1. a) Clarification is essential regarding the 60 months' "minimum" guarantee of survivors' benefits. If, as it states, the Commission is making provision for ceasing to pay these benefits after 5 years, the Council is most strongly opposed. The purpose of pension reform is adequate retirement income. This will not occur if full benefits (2/3) cease before death. We fail to understand the inclusion of this clause.

   b) A mechanism must be put in place to prevent accessibility to waivers by the public. Women are losing their right to retirement income through misplaced trust or misguided priorities - by signing a waiver in ignorance of the consequences.

   We urge that a pre-condition of this option be a requirement to seek counsel by a disinterested third party, to ensure that the spouse is making an informed decision about her/his retirement income.

2. The determination of the rate of interest must be clarified.

3. Council agrees with this recommendation.

4. Survivor benefits must (not "should") continue after remarriage. They must be recognized as retirement income earned by the spouse's equal contribution to the marriage for the period of that marriage, and must not be revoked for any reason. The value of the spouse's work in the home has been recognized by the Marital Property Act, and must be recognized here.

Put another way, the dissolution of a partnership, and the entry into a new one, does not negate the value of the contribution made to the original partnership.

Mortality Tables

Recommendation 15

That uni-sex mortality tables should be used in the calculation of pensions and pension options for the member and the surviving spouse; that all employees be required to contribute equally to buy the same pension benefits; and that women be entitled to the same pension benefits as men upon retirement (all other factors such as salary history and service being equal).

Council fully supports mandatory uni-sex mortality tables. Please refer to the Manitoba Association of Women and the Law recommendation which Council fully endorses.

"N.B." should be amended to read:

A. It is essential that a low rate of interest be used to calculate the benefit of a terminating employee when transferring out a lump sum (reference 1, 2, and 3 above).

B. At present deferred pensions are most often paid in the nominal dollars of the day the employee left that employer, which effectively reduces the value to very little in the dollars of retirement day. There are no regulations providing inflation protection; annual updating is essential (reference 4 above).

May, 1983

THE PENSION COMMISSION OF MANITOBA AND PORTABILITY
RECOMMENDATION 1

Recommendation 1

The legislation should be amended to provide that no pension plan prohibits the right of an employee to the portability of his or her pension credits. In addition, portability would be allowed by the following mechanisms:

1. Transfer to a locked-in R.R.S.P.; or
2. Transfer to a locked-in retirement account (LIRA) as proposed by C.A.P.S.A.; or
3. Transfer to a pension plan of a new employer where such a plan allows for acceptance of such a transfer; or
4. Leave the pension credits in the plan of the present employer.

Portability is an essential component of the reform of the employer-sponsored system. Recommendation 1 of the Pension Commission deals with the issue but clarification is needed on two points:

1. The method of calculation contemplated in parts 1, 2 and 3 of Recommendation 1; and
2. The treatment accorded the pension credits of a departed employee (Recommendation 1, Part 4).

1. Consider the case of a 40 year old employee who is leaving her employer who had, during her 20 year stint with the employer, earned a pension of $8,000 a year for life starting at age 65. The Pension Commission contemplates permitting this employee to take today's lump sum value of the pension and put it into a locked-in R.R.S.P. etc. How should this lump sum be calculated?

   The essential question here is what interest rate the employer will be allowed to use in the calculation.

   If in the calculation the employer is required to use an interest rate of, say, 3% then today's lump sum value of the pension - the amount the employee will be allowed to transfer to her R.R.S.P. - is around $46,000. If however the employer is permitted to use a 7% interest rate in the calculation the lump sum is around $13,000.*

*The numbers used in this example are rough but are indicative of the magnitudes involved.

The difference is obviously substantial. But what is happening here?

Let's assume that the interest rate you can earn on your money - after inflation is taken into account - is around 3%. In this case if inflation was 0% you would get 3% interest at your bank. If inflation was 4% you would get 7% interest at your bank. In the second case, part of the return you received is a "real" interest rate of 3% - and part of the interest rate is an amount that compensates you for the fact that the money in your savings account buys less after a year of 4% inflation.

In our employee's case, if she received $45,000 at age 40 then, when she invested it, it will earn around 3% interest if there is no inflation. But will earn around 7% if there is 4% inflation and around 12% if there is 9% inflation etc. If interest rates relect inflation in this way over the 25 year period between her change of job at age 40 and her retirement, then, regardless of inflation, her R.R.S.P. will be sufficient when she is 65 to purchase an annunity whose real value in today's (1983) dollars will be around $8,000 per year - the appropriate outcome. (Although note that the nominal value in the dollars of her first year of retirement would, if there is intervening inflation, be higher: if prices had tripled in the next 25 years for example it would be $24,000 per year).

It is clear that this will not be the outcome if she receives only $13,000 at age 40. Since she is receiving well under 1/3 of $45,000 the real value of the annuity she will be able to buy at age 65 will be smaller by the same proportion. This arised because the interest rate used to calculate the lump sum (7%) not only includes a "real" interest rate (in this discussion assumed to be 3%), but also, inappropriately includes an inflationary component.*

2. A similar issue is at play in the case where pension credits are left in the plan of an employer. Consider this time the case of a woman who was earning the average wage of $4,000 in 1958,** was 40 years of age in that year and who had worked for that employer for 20 years. She left the employer in 1958 to work elsewhere. Her pension payable at 65 was then calculated at

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*When you have money in the bank the interest rate credited to your account must include the inflationary component so that you are compensated for inflation. When you are calculating lump sums as above, to be protected from inflation the interest rate to be used must not include the inflationary component.

**This a rough guess of average wages and salaries in 1958. (AWS in 1966 = $5,000).

$1600. She is retiring today (1983). (The pension plan assumed here is the same one assumed in the earlier example.)

If there had been no inflation in the intervening 25 years the $1600 pension she will now receive would be appropriate. Substantial inflation has however occurred over the period withe the results that the real value of a $1600 pension calculated in 1958 is likely around four times of that today. Thus if the pension credits referred to in part 4 of the Pension Commission's Recommendation 1 are not updated between the time the employee leaves and she retires, she will have been the victim of inflation.

The point is that the existence of inflation in the 25 years since 1958 also raised nominal interest rates producing higher returns on invested funds. The appropriate use of these higher returns earned by the amounts contributed is to set them aside so that the $1600 pension can be updated. If this had occurred then the woman's pension when it comes in to pay today (1983) would be around four times $1600.

Conclusion

Clearly for there to be real portability the woman in the first example must get around $45,000 today and the woman in the second example should receive a pension of around four times $1600 today. If the Pension Commission's Recommendation 1 still allows a lump sum payment of say $13,000 in the first example and a pension of $1600 in the second, then it cannot be said to be providing portability.*

While it is the case that later recommendations of the Pension Commission** would provide portability these are characterized as reforms that are on a "second list" which entails employer cost. Recommendation 1 is only relevant if it does entail cost. If it doesn't the portability it advertises will not be produced.

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*Actually the second part of this example raises the difficult issue of a retroactive compensation for inflationary losses - something nobody is really prepared to do since the funds required (the difference between $1600 and four times $1600 for this woman's life) are no longer in the pension plan - they have been given to somebody else.

**Based on the CAPSA recommendations.

APPENDIX

NUMBERS USED IN THE EXAMPLES

Calculations of Lump Sums: Example 1

Life expentancy at age 65 assumed to be 15 years.

Pension at age 65 equals $8,000.

	Interest Rate Used in Discounting	
	3%	7%
Lump Sum Value at age 65	$ 95,503	$62,863
Value at age 40	$\frac{\$ 95,503}{(1.03)^{25}} = \$45,600$	$\frac{\$72,863}{(1.07)^{25}} = \$13,425$

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Average Wage/Salaries: 1958 . . . . . $ 4,000)
1983 . . . . . $ 20,000) --- (rough guess)

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Pension Plan: 2% Final Average Plan

Pension in Example 1: (.02) (20) (20,000) = $ 8,000
Pension in Example 2: (.02) (20) (4,000) - $ 1,600

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It is assumed throughout that the "real" interest rate is 3%. There are big debates about what this number really is.

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